

BAKER & HOSTETLER LLP

Bethany G. Lukitsch (SBN 314376)
Kamran B. Ahmadian (SBN 314566)
1900 Avenue of the Stars | Suite 2700
Los Angeles, CA 90067-4508
Telephone: 310.820.8800
Facsimile: 310.820.8859
blukitsch@bakerlaw.com
kahmadian@bakerlaw.com

Attorneys for Defendant
TALKSPACE, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

COURTNEY MITCHENER,
individually, and on behalf of all others
similarly situated,

Plaintiff,

v.

TALKSPACE NETWORK LLC, a New
York Limited Liability Company; and
DOES 1 through 25, inclusive,

Defendant.

Case No.: 2:24-cv-07067-JAK-BFM

[Hon. John A. Kronstadt]

**DEFENDANT TALKSPACE,
INC.'S NOTICE OF MOTION AND
MOTION FOR SANCTIONS
PURSUANT TO FED. R. CIV. P. 11**

*[Filed concurrently with Declaration
of Kamran B. Ahmadian; and
Declaration of Jim Vint]*

Hearing Date: April 21, 2025
Hearing Time: 8:30 a.m.
Dept: 10C

Case Filed: August 20, 2024

1 **TO THE HON. JOHN A. KRONSTADT AND TO PLAINTIFF AND**
2 **THEIR ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that on April 21, 2025 at 8:30 a.m., in Courtroom
4 10C of the above entitled court, Defendant Talkspace, Inc. (incorrectly named in the
5 First Amended Complaint as Talkspace Network LLC) (“Defendant” or “Talkspace”)
6 will and does move for sanctions against Plaintiff Courtney Mitchener (“Plaintiff”)
7 and her attorneys of record, Tauler Smith, LLP (“Plaintiff’s Counsel”), pursuant to
8 Federal Rule of Civil Procedure 11 (“Rule 11”) (“Motion”). This Motion is made on
9 the ground that Plaintiff’s First Amended Complaint (“FAC”) includes allegations
10 that have no basis in fact and were made without a reasonable and competent inquiry.

11 Talkspace seeks an order (1) dismissing Plaintiff’s FAC with prejudice or
12 striking the frivolous allegations, and (2) directing Plaintiff’s Counsel to reimburse
13 Talkspace for its attorneys’ fees and costs incurred in this action as well as bringing
14 this Motion. This Motion is based on this Notice of Motion and Motion, the attached
15 memorandum of points and authorities, the attached declarations of Kamran B.
16 Ahmadian and James Vint and their exhibits, the complete files and records in this
17 action, and any oral or documentary evidence and argument presented at the hearing.

18 This Motion is made after Talkspace met and conferred with Plaintiffs’ Counsel
19 numerous times orally and in writing. *See* Local Rule 7-3. This motion is also being
20 filed after the expiration of Rule 11’s 21-day “safe harbor” provision, during which
21 Plaintiff declined to dismiss or amend the FAC. *See* Fed. R. Civ. P. 11(c)(2).

22
23 Dated: March 7, 2025

BAKER & HOSTETLER LLP

24 By: /s/ Bethany G. Lukitsch
25 Bethany G. Lukitsch
26 Kamran B. Ahmadian
27 *Attorneys for Defendant*
28 TALKSPACE, INC.

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. BACKGROUND	2
III. LEGAL STANDARD	4
IV. ARGUMENT	5
A. The FAC Contains Objectively Baseless Allegations.	5
B. Plaintiff’s Counsel Conducted No “Reasonable Inquiry”	6
C. Monetary and Nonmonetary Damages are Warranted.	8
D. Talkspace Served This Motion More than 21 Days Before Filing.....	9
V. CONCLUSION	9

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Barber v. Miller</i> , 146 F.3d 707 (9th Cir.1998)	9
<i>Burnette v. Godshall</i> , 828 F. Supp. 1439 (N.D. Cal. 1993).....	8
<i>Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.</i> , 498 U.S. 533 (1991)	5
<i>Christian v. Mattel, Inc.</i> , 286 F.3d 1118 (9th Cir. 2002).....	5, 6
<i>Cooter & Gell v. Hartmarx Corp.</i> , 496 U.S. 384 (1990)	5
<i>G.C. & K.B. Invs., Inc. v. Wilson</i> , 326 F.3d 1096 (9th Cir. 2003).....	6
<i>Gallego v. Hunts & Henriques, CLP</i> , 2020 WL 5576134 (N.D. Cal. Sept. 17, 2020).....	7
<i>Gaskell v. Weir</i> , 10 F.3d 626 (9th Cir. 1993)	8
<i>Gutierrez v. Converse Inc.</i> , 2024 WL 3511648 (C.D. Cal. July 12, 2024) (Kato, J.)	7
<i>Havensight Cap. LLC v. Nike, Inc.</i> , 891 F.3d 1167 (9th Cir. 2018)	8
<i>Holgate v. Baldwin</i> , 425 F.3d 671 (9th Cir.2005)	6, 9
<i>Ivanova v. Columbia Pictures Industries, Inc.</i> , 217 F.R.D. 501 (C.D. Cal. 2003) (Tevrizian, J.).....	9
<i>Lampkin v. Cnty of Sacramento</i> , 2022 WL 3327469 (E.D. Cal. Aug. 11, 2022)	7

1	<i>Lawrence v. Richman Grp. of CT LLC,</i>	
2	620 F.3d 153 (2d Cir. 2010).....	9
3	<i>Lloyd v. Schlag,</i>	
4	884 F.2d 409 (9th Cir. 1989).....	5
5	<i>Moser v. Bret Harte Union High School Dist.,</i>	
6	366 F. Supp. 2d 944 (E.D. Cal. 2005).....	6
7	<i>Rocawear Licensing LLC v. Pacesetter Apparel Grp.,</i>	
8	2007 WL 5289738 (C.D. Cal. Oct. 1, 2007) (Carney, J.)	6
9	<i>Townsend v. Holman Consulting Corp.,</i>	
10	929 F.2d 1358 (9th Cir. 1990).....	7, 8
11	<i>Truesdell v. S. Cal. Permanente Medical Group,</i>	
12	293 F.3d 1146 (9th Cir. 2002).....	6, 8
13	Rules	
14	Fed. R. Civ. P. 11 <i>et seq.</i>	<i>passim</i>

1 **I. INTRODUCTION**

2 This lawsuit is one of well *over a hundred* of near-identical complaints filed
3 by Tauler Smith, LLP (“Plaintiff’s Counsel”) premised on a grossly expanded
4 definition of a “trap and trace” device under the California Invasion of Privacy Act
5 (“CIPA”), Cal. Penal Code § 638.51. Simply put, Plaintiff alleges that Defendant
6 Talkspace, Inc.’s (misidentified in the complaint as Talkspace Network LLC)
7 (“Talkspace”) use of a certain advertising technology, the TikTok web beacon
8 (“TikTok Cookie”), on its public-facing website, www.talkspace.com (the “Website”)
9 constitutes an illegal trap and trace device. *See generally*, First Amended Complaint
10 (“FAC”). Not only does Plaintiff’s novel application of CIPA fail as a matter of law,
11 (see Talkspace’s Motion to Dismiss, Dkt. No. 18) but the FAC is riddled with
12 baseless, factually unsupported allegations. Specifically, the FAC alleges (without
13 any factual support) that when a visitor enters their “name, date of birth, and address”
14 into the Website that identifying information is “sent simultaneously to TikTok.”
15 FAC, ¶ 13. Worse still, the FAC alleges (again without any support) that Talkspace
16 sends “medical information related to minors” to TikTok. *Id.*, ¶ 15. As outlined
17 below, these statements have been alleged in the FAC as “facts” despite being
18 *patently false*. And, Plaintiff (who is not a minor) does not allege any facts about her
19 alleged visit to the Website, let alone that she filled out the form depicted in
20 Paragraph 12 to capture this information.

21 Plaintiff’s Counsel *should have* recognized the lack of veracity in these
22 allegations before filing the *initial* complaint. A reasonable pre-suit investigation
23 would have easily confirmed their inaccuracy. Yet, Plaintiff’s Counsel is undoubtedly
24 aware of their falsity *now*. Counsel for Talkspace explicitly informed Plaintiff’s
25 Counsel of the baselessness of these allegations on numerous occasions and even
26 provided them with a declaration from a third-party expert and a draft of this Motion.
27 Undeterred, Plaintiff’s Counsel has doubled down by filing an amended complaint
28 that continues to advance these same false allegations, choosing instead to publicly

1 and falsely impugn Talkspace's privacy practices. This reckless act has caused
2 significant reputational harm to Talkspace, damaging both current and future business
3 opportunities. Plaintiff Counsel's frivolous and irresponsible pleading warrants the
4 imposition of Rule 11 sanctions.

5 **II. BACKGROUND**

6 Talkspace is a leading online and mobile therapy company. Talkspace offers
7 customers a more affordable and convenient alternative to in-person therapy sessions
8 and has helped thousands of people across the country obtain mental health services.
9 Talkspace maintains a public-facing website, www.talkspace.com, where users can
10 explore and purchase customizable subscription plans and review articles and
11 information regarding the company and its programs. Any therapy and appointment
12 booking provided by Talkspace is administered through a separate portal not at issue
13 in this case. Like many companies, Talkspace utilizes advertising technologies on its
14 website, including the TikTok Cookie. However, *Talkspace is deeply committed to*
15 *privacy* and exercises stringent controls over the information collected from users'
16 browsers and interactions on its website, including what is shared with third parties.
17 Talkspace has never permitted the TikTok Cookie to collect personal information,
18 such as a visitor's name, date of birth, or address, from any page or form on its
19 website. Additionally, Talkspace has never shared any medical information of minors
20 with TikTok.

21 On August 20, 2024, Plaintiff filed an initial complaint against Talkspace. *See*
22 Dkt. No. 1 ("Complaint" or "Compl."). Plaintiff's Complaint included at least two
23 "factual" allegations that are patently false:

24 12. Additionally, when the website asks for information, such as
25 name, date of birth, and address, *the information is sent*
26 *simultaneously to TikTok*, so that TikTok can isolate with certainty the
individual to be targeted.

27 15. As can be seen above, *the information given to TikTok by*
28 *Talkspace includes medical information related to minors*, which is
particularly troubling given recent concerns that TikTok's data
collection practices are a threat the United States.

1 Compl., ¶¶ 12, 15 (emph. added).

2 Despite a good faith belief that these allegations were false, Talkspace’s
3 undersigned counsel immediately engaged a third-party expert, Secretariat Advisors,
4 LLC (“Secretariat”), to confirm the falsity of the allegations. *See* Declaration of Jim
5 Vint (“Vint Decl.”), ¶¶ 8-12. Using an industry-standard web traffic analysis
6 software, Secretariat evaluated the TikTok Cookie on the Website, with a particular
7 focus around the screenshots provided in the Complaint (and FAC) in paragraphs 12
8 through 15. *Id.*, ¶¶ 8-10. Secretariat’s investigation **confirmed** that:

- 9 (1) the TikTok Cookie **does not** collect name, date of birth, or address
10 from any webpage or form on the Website; and
11 (2) the TikTok Cookie **does not** collect *any* medical information, let
12 alone medical information related to “minors”.

13 *Id.*, ¶ 12. In sum, there is no factual basis for these allegations whatsoever.

14 These findings were communicated to Plaintiff’s Counsel during several meet
15 and confer calls. *See* Declaration of Kamran B. Ahmadian (“Ahmadian Decl.”), ¶¶
16 3-4, 7. At no time did Plaintiff’s Counsel provide the factual basis for these
17 allegations. *Id.* Instead, Plaintiff’s Counsel spewed conspiracy theories about
18 Talkspace and issued veiled threats, which can be best summarized by the following
19 email received on October 30, 2024:

20 Can’t wait to see which “expert” you drudged up that says “TikTok
21 Software does not identify users.” I’ll bet you twenty bucks your
22 “expert” is a marketing goon from the company itself - TalkSpace - a
23 company whose only mission is to prey on teenagers to onram[p (sic)
24 them to the **BIG PHARMA ECONOMY** - a company that will do so
25 even if it means sharing information about our vulnerable youth to our
geopolitical enemies.

24 You are not helping them in any way by escalating - this I can promise
25 you.

26 *Id.*, ¶¶ 3, 5, Exh. A (October 30, 2024 email correspondence) (emph. in original).

27 Indeed, this correspondence shows Plaintiff’s Counsel’s true colors and
28 motives—he wants to publicly attack Talkspace based on his preconceived (and

1 unsubstantiated) notions of Talkspace rather than verified facts and evidence. Given
2 Plaintiff's Counsel's refusal to dismiss or amend the initial complaint, Talkspace filed
3 a Motion to Dismiss on November 4, 2024. *See* Dkt. No. 12. The following day, on
4 November 5, 2024, Talkspace served Plaintiff's Counsel with a Rule 11 Motion that
5 was fundamentally identical to this Motion, and which included the very same
6 declaration from Mr. Vint. *See* Ahmadian Decl., ¶ 6.

7 On November 25, 2024, rather than oppose the initial motion to dismiss,
8 Plaintiff filed the operative FAC. *See* Dkt. No. 17. Although the wording is changed
9 slightly from the initial complaint, the FAC contains the same false allegations
10 regarding what information is sent from Talkspace's website to TikTok:

11 13. ...When the website asks for information, such as name, date of
12 birth, and address, as it does above, ***the information is sent***
13 ***simultaneously to TikTok***, so that TikTok can isolate with certainty the
individual to be targeted.

14 15. Worse yet, as can be seen below, TalkSpace encourages website
15 visitors, including those seeking "Teen Therapy" to enter information
16 that is simultaneously sent to TikTok. As such, ***TikTok obtains medical***
information related to minors through TalkSpace.

17 FAC, ¶¶ 13, 15 (emph. added). On December 3, 2024, counsel for Talkspace held
18 another meet-and-confer call with Plaintiff's Counsel to discuss the false allegations
19 and other pleading deficiencies in the FAC. *See* Ahmadian Decl., ¶ 7. Yet again, no
20 factual basis was provided for the false allegations, and Plaintiff's Counsel refused to
21 amend or dismiss the FAC. *Id.*

22 **III. LEGAL STANDARD**

23 Federal Rule of Civil Procedure 11 authorizes sanctions against parties who
24 engage in frivolous litigation and assert baseless claims. Fed. R. Civ. P. 11. Rule 11
25 provides, in relevant part:

26 (b) By presenting to the court a pleading, written motion, or other
27 paper—whether by signing, filing, submitting, or later advocating it—
28 an attorney or unrepresented party certifies that to the best of the
person's knowledge, information, and belief, ***formed after an inquiry***
reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; and

(3) the factual contentions *have evidentiary support* or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

The “central purpose of Rule 11 is to deter baseless filings” by imposing a duty on attorneys to certify that they have “conducted a reasonable inquiry and have determined that any papers filed with the court are well grounded in fact [and] legally tenable.” *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990) (partially superseded on other grounds by 1993 Rule 11 amendment). In short, “Rule 11 stresses the need for some prefiling inquiry into both the facts and the law[.]” *Lloyd v. Schlag*, 884 F.2d 409, 412 (9th Cir. 1989); *Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533, 542 (1991) (The “heart of Rule 11” is the signer’s certification that he “has conducted a reasonable inquiry into the facts and the law and is satisfied that the document is well grounded in both[.]”).

IV. ARGUMENT

A. The FAC Contains Objectively Baseless Allegations.

Filing a complaint in federal court “is no trifling undertaking.” *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th Cir. 2002). “An attorney’s signature on a complaint is tantamount to a warranty that the complaint is well grounded in fact and ‘existing law’...” *Id.* When a “complaint is the primary focus of Rule 11 proceedings, a district court must conduct a two-prong inquiry to determine: (1) whether the complaint is legally or factually baseless from an objective perspective, and (2) if the attorney has conducted a reasonable and competent inquiry before signing and filing it.” *Christian*, 286 F.3d at 1127. Subjective bad faith is not required; rather, the standard is objective reasonableness. *See, e.g., G.C. & K.B. Invs., Inc. v. Wilson*, 326

1 F.3d 1096, 1109 (9th Cir. 2003). Unreasonableness is viewed “from the perspective
2 of a competent attorney admitted to practice before the district court.” *Moser v. Bret*
3 *Harte Union High School Dist.*, 366 F. Supp. 2d 944, 950 (E.D. Cal. 2005).

4 Here, the FAC filed against Talkspace contains numerous allegations that are
5 objectively incomplete and were clearly made without any reasonable and competent
6 inquiry. *Holgate v. Baldwin*, 425 F.3d 671, 676 (9th Cir.2005). Indeed, the FAC
7 alleges that when a visitor enters certain identifying information, “such as name, date
8 of birth, and address” into Talkspace’s website, the information is sent simultaneously
9 to TikTok, so that TikTok can isolate with certainty the individual to be targeted.”
10 FAC, ¶ 13. ***This is demonstrably false.*** The TikTok Cookie ***does not*** collect “name,
11 date of birth, [or] address” from any page or form on the Talkspace Website. *See Vint*
12 *Decl.*, ¶ 12. Even worse, the FAC alleges that Talkspace shares “medical information
13 related to minors” with TikTok. FAC, ¶ 15. Again, this allegation ***has no basis in***
14 ***fact.*** *See Vint Decl.*, ¶ 12.

15 By filing a complaint containing false allegations, Plaintiffs’ Counsel has
16 violated Rule 11. *See Truesdell v. S. Cal. Permanente Medical Group*, 293 F.3d 1146,
17 1153-54 (9th Cir. 2002) (upholding sanctions against counsel under Rule 11 where
18 complaint stated allegations that counsel “must have known were false”).

19 **B. Plaintiff’s Counsel Conducted No “Reasonable Inquiry.”**

20 Before filing a complaint, plaintiff’s attorneys are required to conduct a
21 “reasonable and competent inquiry” into whether their claims and allegations are well
22 grounded in fact. *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th Cir. 2002).
23 Allegations must be based on “credible information,” not just “mere suspicions or
24 suppositions.” *Rocawear Licensing LLC v. Pacesetter Apparel Grp.*, 2007 WL
25 5289738, *2 (C.D. Cal. Oct. 1, 2007) (Carney, J.). Plaintiff’s Counsel abjectly failed
26 to conduct any such inquiry here.

27 *First*, as confirmed by Secretariat’s review and findings, the allegations from
28 the FAC described above are not grounded in fact and could not have been the product

1 of a reasonable and competent inquiry because they are plainly false. *See generally*,
2 Vint Decl., ¶ 12. Plaintiff's Counsel has ready access to technical experts, having
3 filed hundreds of lawsuits involving advertising technology, including at least one
4 case that was decided on summary judgment after consideration of technical expert
5 testimony. *See e.g., Gutierrez v. Converse Inc.*, 2024 WL 3511648, at *8 (C.D. Cal.
6 July 12, 2024) (Kato, J.).

7 *Second*, by continuing this litigation, and filing an amended complaint that
8 contains the same false allegations, Plaintiff's Counsel is purposefully ignoring
9 evidence provided to him by Talkspace that shows, with certainty, that the allegations
10 are baseless. The Ninth Circuit has recognized that Rule 11 sanctions are appropriate
11 where plaintiff's counsel "conducted absolutely no inquiry," even after learning of
12 the lack of factual basis for the claims. *Townsend v. Holman Consulting Corp.*, 929
13 F.2d 1358, 1366 (9th Cir. 1990); *see also, e.g., Gallego v. Hunts & Henriques, CLP*,
14 2020 WL 5576134, *1–2 (N.D. Cal. Sept. 17, 2020) (granting Rule 11 sanctions
15 where defendant informed plaintiff's counsel "before [he] filed the lawsuit" that it
16 was uninvolved in the conduct alleged and plaintiff's counsel failed to make "any
17 effort to discern the truth."); *Lampkin v. Cnty of Sacramento*, 2022 WL 3327469, *1–
18 2 (E.D. Cal. Aug. 11, 2022) (granting sanctions where "Defendant warned Plaintiffs'
19 counsel that the claims against it were misplaced"). Just as in *Townsend*, Plaintiff's
20 Counsel was informed on several occasions, including days after filing the initial
21 complaint, and after filing of the amended pleading, that the FAC contained
22 allegations that are entirely false. *See Ahmadian Decl.*, ¶¶ 3-5. Indeed, Plaintiff's
23 Counsel had the declaration from Talkspace's a third-party expert several weeks
24 before the FAC was filed. Plaintiff's Counsel decided to ignore the evidence provided
25 by Talkspace and is proceeding with a FAC that contains demonstrably false
26 allegations with no good faith basis to support them. *See FAC*, ¶¶ 12-15; *Townsend*,
27 929 F.2d at 1366. This is precisely the type of conduct that Rule 11 sanctions are
28 meant to deter.

1 **C. Monetary and Nonmonetary Damages are Warranted.**

2 Courts have broad discretion to impose sanctions for Rule 11 violations against
3 any attorney or party when a pleading is factually misleading, legally frivolous, or
4 presented to harass the opposing party. *See Havensight Cap. LLC v. Nike, Inc.*, 891
5 F.3d 1167, 1170 (9th Cir. 2018); *Truesdell v. S. California Permanente Med. Grp.*,
6 293 F.3d 1146, 1153 (9th Cir. 2002); Fed. R. Civ. P. 11(c). The Court can impose
7 sanctions for misrepresentations or frivolous pleadings, even if the party to be
8 sanctioned has asserted a non-frivolous claim. *Townsend*, 929 F.2d at 1362; *see also*
9 *Burnette v. Godshall*, 828 F. Supp. 1439, 1447-48 (N.D. Cal. 1993) (“Sanctions shall
10 be imposed whether the pleading or motion is frivolous in whole or in part.”). To
11 remedy and deter this type of behavior, the Court may enter **both** monetary and non-
12 monetary sanctions. Fed. R. Civ. P. 11(c)(5).

13 At minimum, an award of fees and costs incurred by Talkspace in defending
14 against the frivolous allegations is warranted under the circumstances. When “the
15 original complaint is the improper pleading, all attorney fees reasonably incurred in
16 defending against the claims asserted in the complaint form the proper basis for
17 sanctions.” *Gaskell v. Weir*, 10 F.3d 626, 629 (9th Cir. 1993). Here, despite being
18 given every opportunity to purge the offending allegations, Plaintiff’s Counsel forced
19 Talkspace to draft two motions to dismiss *and* serve this Rule 11 Motion. As a result,
20 Talkspace has been forced to incur significant legal fees, as well as expert costs, in
21 preparing and filing this Motion to defend against these frivolous assertions. To right
22 this wrong, the Court may (and should) award Talkspace all reasonable fees and
23 expenses incurred in defending against the baseless allegations to date. *See id.* at 629.

24 Rule 11 also provides for the imposition of non-monetary sanctions, including
25 striking frivolous allegations. Fed. R. Civ. P. 11(c)(2). The striking of frivolous
26 allegations and references in a complaint which are contrary to fact is a permissible
27 non-monetary sanction, including where a monetary sanction is also assessed against
28 plaintiff’s counsel. *See Ivanova v. Columbia Pictures Industries, Inc.*, 217 F.R.D.

501, 512-514 (C.D. Cal. 2003) (Tevrizian, J.) (imposing such sanctions on plaintiff and plaintiff’s counsel).

Because the allegations are patently false, Talkspace respectfully requests that the Court dismiss the FAC entirely with prejudice, or strike the frivolous allegations from the FAC, in addition to ordering monetary sanctions.

D. Talkspace Served This Motion More than 21 Days Before Filing.

A Rule 11 motion for sanctions must be served on the offending party at least 21 days before the motion is filed with the court. Fed. R. Civ. P. 11(c)(2). The motion may not be filed if the offending party timely “withdraw[s] or appropriately correct[s]” the challenged contention during the safe harbor period. *Id.*; *see also Holgate*, 425 F.3d at 678 (holding that we “enforce [Rule 11’s] safe harbor provision strictly”). The purpose of the safe harbor provision is to give the offending party an opportunity to correct or withdraw its problematic pleading, and “*thereby escape sanctions.*” *Barber v. Miller*, 146 F.3d 707, 710 (9th Cir.1998) (emph. in original).

Pursuant to Rule 11’s safe harbor provision, Talkspace served Plaintiff’s Counsel with a copy of this Motion on February 3, 2025.¹ *See* Ahmadian Decl., ¶ 8. Plaintiff’s Counsel did not utilize this twenty-one (21) day safe harbor period to dismiss the lawsuit or amend the FAC to remove the frivolous allegations. *Id.*

V. CONCLUSION

For the forgoing reasons, the Court should dismiss the FAC with prejudice and/or strike the frivolous allegations, and award Talkspace reasonable attorney’s fees attributable to this Motion, a portion of the fees attributable to the Motion to Dismiss,

¹ Ninth Circuit case law is somewhat unclear as to whether the Rule 11(c)(2) safe harbor requirements reset for an amended complaint if the false allegations remain the same. However, the Second Circuit has held that “the filing of an amended complaint likely resets the clock for compliance with the safe harbor requirements of Rule 11(c)(2),” even if the false allegations are substantially similar. *See Lawrence v. Richman Grp. of CT LLC*, 620 F.3d 153, 158 (2d Cir. 2010) (Although the 21-day safe harbor period may be satisfied for the initial complaint, it does not fulfill the requirement for a subsequently filed amended complaint). To be safe, Talkspace reserved this Motion and provided Plaintiff’s Counsel with *another* 21-day safe harbor period.

1 and all other reasonable attorney's fees incurred thus far in defending against this
2 action as a sanction under Rule 11 for the assertion of frivolous allegations.

3
4 Dated: March 7 , 2025

BAKER & HOSTETLER LLP

5 By: /s/ Kamran B. Ahmadian

6 Bethany G. Lukitsch

7 Kamran B. Ahmadian

8 *Attorneys for Defendant*

9 TALKSPACE, INC.

10
11
12
13 **L.R. 11-6.2. Certificate of Compliance**

14 The undersigned, counsel of record for Defendant Talkspace, Inc., hereby
15 certifies that this brief contains 3,081 words, which complies with the word limit of
16 L.R. 11-6.1.
17

18 /s/Kamran B. Ahmadian

19 Kamran B. Ahmadian
20
21
22
23
24
25
26
27
28